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# Regulatory backlog threatens health and the environment

BY RENA STEINZOR — 08/22/13 05:00 PM EDT

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Over the last two years, we've seen a raft of bills aimed at hobbling federal agencies as they work to write regulations implementing such landmark legislation as the Clean Air Act, the Occupational Safety and Health Act, and the Clean Water Act, as well as newer laws like the Affordable Care Act and the Dodd-Frank banking reform law. Their efforts are backed by a flood of anti-regulation rhetoric from think tanks and industry associations that warn of a tsunami of regulation under President Obama.

A tsunami? Hardly. The truth is that the Obama Administration hasn't been anywhere near as aggressive as it could and should be. Last year, for example, fewer regulations were issued than in any single year of the Bush Administration. This year is shaping up to be the slowest year for new regulations since 1997.

Don't get me wrong, I wish it were otherwise. In many cases, rules to implement laws passed by Congress languish for years, pinned down by intense lobbying by industry and its allies. That's the case with a number of rules required under the 1990 Clean Air Act Amendments — like the long-overdue revisions to air quality standards for ozone and emissions standards for hazardous air pollutants from oil refineries. If allowed to proceed on schedule, the annual benefits of Clean Air Act rules by 2020 will include 237,000 adult lives saved and the prevention of 17 million work loss days and 5.4 million school loss days. So what's stopping the EPA?

Rules must pass through a gauntlet of court challenges, aggressive lobbying by regulated industries, and repeated analysis by the little known but overly powerful White House Office of Information and Regulatory Affairs (OIRA), which holds onto rules for months or even years before they see the light of day. As it happens, an executive order limits OIRA's review to 90 days with a possible 30-day extension, but of the 129 draft rules currently under review at OIRA, 58 have been held up for longer than 120 days and 33 have been stalled for more than a year. My law students would rejoice if I showed that kind of laxness with deadlines.

In addition to delaying rules, OIRA's staff of economists routinely dismisses the expertise of scientists and public health experts, and what emerges from OIRA — after long delays — are weakened protections for the public, with no explanation and little transparency in the process.

That opacity is a particular problem because it masks a disturbingly political process, in which OIRA, under the guise of overseeing cost-benefit analyses, invites industry lobbyists to repeat all the same arguments they've offered not just to the agencies drafting regulations, but years before that, to Congress when it drafted the relevant law. Before

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OIRA, industry often succeeds with arguments that don't make much headway elsewhere, precisely because the process is so closed.

Opponents of regulation also seek to undermine the very legitimacy of agency rulemaking by fostering public hostility toward government and belittling life-saving regulation as "red tape." What results is the gross politicization of the regulatory process, resulting in long delays and weaker rules, as measured in lives and health. For example, the cost of the recent eight-month delay of the EPA's ozone rule is projected to be somewhere between 1,000 and 2,867 premature deaths.

The simple truth is that cries of "over-regulation" from industry and its allies in Congress are hokey. Having lost pitched battles in Congress over adoption of various environmental, health, and safety laws, they're simply re-litigating their case, hoping to undermine the rules that breathe life into laws they opposed in the first place. More broadly, they're trying to intimidate the administration from aggressively pursuing the only course that congressional gridlock leaves open to it to address climate change, air pollution, water pollution, unsafe working conditions, and more.

We can only hope the administration doesn't fall for it. *Steinzor is a professor of Law at the University of Maryland Francis King Carey School of Law. She is the president of the Center for Progressive Reform.*

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